

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH S. SYLVESTER, et al.

Plaintiffs,

V.

MERCHANTS CREDIT CORPORATION,

Defendant.

C17-168 TSZ

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Plaintiffs Kenneth and Lisa Sylvester (“plaintiffs”) seek an order enforcing a settlement agreement in this matter. See Motion to Enforce Settlement Agreement, docket no. 36. The motion is not opposed. Having considered plaintiffs’ brief filed in support of the motion, the Court **DENIES** the motion to enforce settlement agreement, docket no. 36.

Trial courts may “summarily enforce . . . a settlement agreement entered into by the litigants” while the litigation is pending. *In re City Equities Anaheim, Ltd.*, 22 F.3d 954, 957 (9th Cir. 1994). “Settlement agreements are interpreted according to the principles of contract law.” *Tucker v. Tucker*, 203 F.3d 832, 832 (9th Cir. 1999); *see also Jeff D. v. Andrus*, 899 F.2d 753, 760 (9th Cir. 1989) (“The construction and enforcement of settlement agreements are governed by principles of local law which apply to interpretation of contracts generally.”).

To form a valid and enforceable contract in Washington, the parties must objectively manifest their mutual assent to the essential terms. *Yakima Cnty. Fire*

1 *Prot. Dist. No. 12 v. City of Yakima*, 122 Wn.2d 371, 388, 858 P.2d 245 (1993).
2 Under Washington law, a contract may be established by agreement of counsel
3 even though the parties contemplated signing a more formal writing in the future.
4 *Loewi v. Long*, 76 Wn. 480, 484, 136 P. 673 (1913); *Morris v. Maks*, 69 Wn. App.
5 865, 850 P.2d 1357 (1993). The party asserting the existence of the contract must
6 show the terms of the contract are stated, agreed upon, and that “the parties
7 intended a binding agreement prior to the time of the signing and delivery of a
8 formal contract.” *Plumbing Shop v. Pitts*, 67 Wn.2d 514, 520, 408 P.2d 382
9 (1965) (quoting *Loewi*, 76 Wn. at 484); *see also Keystone Land & Dev. Co. v.*
10 *Xerox Corp.*, 353 F.3d 1070, 1073 (9th Cir. 2003). “Equally certain is that if the
11 parties intended their legal obligations to be deferred until the execution of the
12 formal writing, the preliminary writings and negotiations cannot constitute a
13 contract.” *Keystone*, 353 F.3d at 1073 (citing *Plumbing Shop*, 67 Wn.2d at 520-
14 21); *see also KVI, Inc. v. Doernbecher*, 24 Wn.2d 943, 967, 167 P.2d 1002 (1946).
15 The parties’ intent to enter into a subsequent agreement “is strong evidence to
16 show that they do not intend the previous negotiations to amount to any proposal
17 or acceptance.” *Pac. Cascade Corp. v. Nimmer*, 25 Wn. App. 552, 556, 608 P.2d
18 266 (1980) (quoting *Coleman v. St. Paul & Tacoma Lumber Co.*, 110 Wash. 259,
19 272, 188 P. 532 (1920)).

20 When a party moves to enforce the terms of a settlement agreement, that
21 party bears the burden of “proving that there is no genuine dispute over the
22 existence and material terms of the agreement.” *Bringerhoff v. Campbell*,
23 99 Wn. App. 692, 696-97, 994 P.2d 911 (2000). The court must view the facts in
24 the light most favorable to the non-moving party to “determine whether reasonable
25 minds could reach but one conclusion.” *Id.* at 697. Here, defendant’s counsel
26 confirmed “[w]e have a deal” after conferring with his client in response to
27 plaintiffs’ offer. *See Declaration of Ryan L. McBride, Ex. B, docket no. 36-4*
28 (“Email Correspondence”), at 7. However, that email and subsequent
29 correspondence reflects an intent to enter into a subsequent agreement and that the
30 parties would need to review and approve that subsequent agreement. For
31 example, defendant’s counsel—in the same email in which he stated “[w]e have a
32 deal”—stated that he “had a question on how [plaintiff] wanted to handle the
33 payments.” *Id.* Plaintiffs’ counsel later emailed a draft settlement agreement and
34 asked “if [defendants’ counsel had] any redlines.” *Id.* at 12. Plaintiffs’ counsel
35 subsequently emailed defendants’ counsel, stating that “you indicated you did not
36 have any edits to the settlement agreement I proposed to you and were going to
37 run the agreement by your decision maker and get back to me soon” *Id.* at
38 17. Although in some instances the parties may enter an enforceable settlement
39 agreement even though they contemplate executing a future, more formal
40 agreement, *see, e.g., McKelvey v. Am. Seafoods*, No. C99-2108L, 2000 WL
41 33179292, at *1 (W.D. Wash. Apr. 7, 2000), this is not such a case. Taking the
42 facts in the light most favorable to the non-moving party, the email

1 correspondence indicates that although the parties agreed to certain terms of the
2 settlement, defendants' counsel expressly indicated that he would need to obtain
3 client approval for the final agreement. The Court finds plaintiffs have failed to
4 show that the parties "intended a binding agreement prior to the time of the
5 signing and delivery of a formal contract." *Plumbing Shop*, 67 Wn.2d at 520.
6 Moreover, Washington law requires "a stipulation in open court on the record, or a
7 writing acknowledged by the party to be bound" in order to bind a party to a
8 settlement agreement negotiated by the party's attorney. *Bryant v. Palmer Coking*
9 *Coal Co.*, 67 Wn. App. 176, 178 (1992) (citing CR 2A and RCW 2.44.010). The
10 purpose of this rule is to avoid situations where one party seeks to enforce a
11 settlement agreement against another party that has not agreed to the settlement
12 terms. *Id.* at 179.

13 (2) The parties are ORDERED to file a Joint Status Report on or before
14 August 30, 2019, addressing potential trial dates in October 2019.

15 (3) The Clerk is directed to send a copy of this Minute Order to all counsel of
16 record.

17 Dated this 2nd day of August, 2019.

18
19 William M. McCool
20 Clerk

21
22 s/Karen Dews
23 Deputy Clerk